

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION**

MONTA ORLANDO JORDAN, )  
                                )  
Plaintiff,                 ) Case No. 7:19CV00214  
                                )  
v.                             ) **OPINION AND ORDER**  
                                )  
JOSEPH FLIPPIN, ET AL., ) By: James P. Jones  
                                ) United States District Judge  
Defendants.                 )  
                                )

*Monta Orlando Jordan, Pro Se Plaintiff; Timothy R. Spencer, Roanoke City Attorney's Office, Roanoke, Virginia, for Defendant Flippin; and Justin M. Lugar, Assistant United States Attorney, Roanoke, Virginia, for Defendants Sloan, Crowder, and the United States.*

The plaintiff, Monta Orlando Jordan, a Virginia jail inmate proceeding pro se, filed this action under 42 U.S.C. § 1983 and *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). Now before me are a Motion to Dismiss for Failure to Prosecute and Jordan's response thereto. After review of the record, I conclude that the motion must be denied.

In Jordan's Complaint, he alleges that the defendant law enforcement officers used unlawful search warrants to break into his home and steal his property. In July of 2019, defendant Flippin filed a Motion to Dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure, ECF No. 15, and Jordan responded, ECF No. 25. In September 2019, defendants Crowder and Sloan filed a Motion to Dismiss under Rule 12(b)(6), ECF No. 36. Jordan responded by filing a Motion to Amend, ECF

No. 39, which was granted, ECF No. 41. In October 2019, defendants filed additional Motions to Dismiss, ECF Nos. 43 and 45, addressing Jordan's claims as amended. The court notified Jordan of these motions and directed him to file any response thereto in 21 days from the date of the Notice, ECF No. 47. The Notice also warned Jordan,

[i]f Plaintiff does not respond to Defendant[s'] pleadings, the Court will assume that Plaintiff has lost interest in the case, and/or that Plaintiff agrees with what the Defendant[s] state[] in their responsive pleading(s). If Plaintiff wishes to continue with the case, it is necessary that Plaintiff respond in an appropriate fashion. Plaintiff may wish to respond with counter-affidavits or other additional evidence as outlined above. However, if Plaintiff does not file some response within the twenty-one (21) day period, the Court may dismiss the case for failure to prosecute.

Notice, ECF No. 47. In late October, Jordan responded to the motion by Crowder and Sloan, ECF No. 49.<sup>1</sup>

On November 22, 2019, Flippin filed a Motion to Dismiss for Failure to Prosecute, ECF No. 55. The court notified Jordan that he had 21 days to respond, and he has done so. Flippin's motion argues that Jordan has failed to prosecute his case against Flippin, because Jordan did not submit a timely response to Flippin's October Motion to Dismiss for failure to state a claim, ECF No. 43. Jordan contends that he did not respond to Flippin's October motion, because he never received a

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<sup>1</sup> The court construed Jordan's response as amending the Complaint to add a claim against the United States under the Federal Tort Claims Act. In early December, the United States filed a Motion to Dismiss for Lack of Jurisdiction, ECF No. 50, that is not yet ripe for disposition.

copy of that motion. Jordan also points out that he *did* file a response to the other defendants' October motion, indicating his intent to proceed with the lawsuit as a whole, as required by the court's Notice. Furthermore, he asks for more time to respond to Flippin's motion after he is provided with a copy of it.

I cannot find that Flippin's Motion to Dismiss for Failure to Prosecute is well taken. Jordan did file a response in opposition to Flippin's first Motion to Dismiss, and he filed a response in opposition to dismissal of his case after the defendants' October motions were filed. Furthermore, I find that Jordan's submissions over the course of the case clearly indicate his continued intent to prosecute his claims in this case. Accordingly, it is **ORDERED** as follows:

1. Defendant Flippin's Motion to Dismiss for Failure to Prosecute, ECF No. 55, is DENIED, and he is DIRECTED to provide the plaintiff with a copy of his October 2019 Motion to Dismiss, ECF No. 43, within 10 days from the entry of this Order; and
2. The plaintiff is DIRECTED to file any response to Flippin's October Motion to Dismiss within 30 days from the entry of this Order. No additional extensions of time will be granted.

ENTER: December 13, 2019

/s/ James P. Jones  
United States District Judge